THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 4125 of 1999

O r d e r:

Assailing the award dated 26.10.1998, passed by the Labour Court-I, Hyderabad, in I.D. No. 43 of 1997, published in G.O. Rt. No. 2287, dated 23.12.1998, the petitioner filed the present writ petition.

The petitioner, while working as Driver in the 1st respondent-APSRTC, reported sick at APSRTC Hospital, Tarnaka on 28.01.1993, and he remained absent from his duties from 02.02.1993 onwards without any intimation. As such, based on the report of the Traffic Supervisor, a charge sheet was issued against the petitioner alleging that he unauthorizedly absented from his duties from 02.02.1993 onwards and sent the same to his residential address, but it was returned with an endorsement "No such addressee at door No." After displaying the charge sheet on the notice board for seven days and after obtaining the signatures of two witnesses, a regular enquiry was initiated. The petitioner failed to attend before the Enquiry Officer, in spite of issuing several notices and all the notices sent to his address were returned undelivered. Therefore an *ex parte* enquiry was conducted, and the Enquiry Officer, who conducted the enquiry into the charges leveled against the petitioner, submitted his report holding that the charges are proved. Based on the enquiry report, the 1st respondent, namely the Depot Manager issued notice to the petitioner, calling upon him to show cause as to why he should not be removed from service, but the same was also returned un-served. Finally, vide proceedings dated 18.02.1994, the 1st respondent-Depot Manager removed the petitioner from service.

Assailing the order of removal, the petitioner filed I.D. No. 43 of 1997 before the Labour Court, which by award dated 26.10.1998, published in G.O. Rt. No. 2287, dated 23.12.1998, dismissed the same, upholding the orders of the disciplinary authority. Assailing the said award and notification, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner reported sick at RTC Hospital, Tarnaka, and he was admitted in the hospital for his ailment on 28.01.1993, and after undergoing treatment for certain period as there was no improvement, the petitioner took treatment privately in terms of APSRTC Employees (Medical Attendance and Treatment) Regulation, and as he could not get medical certificate for his Unani, Ayurvedic and Trantric treatments, he has not submitted any medical certificate. He further submits that the

1st respondent-APSRTC, without serving any notice and without giving reasonable opportunity to the petitioner, has conducted *ex parte* enquiry, and based on the said enquiry report the petitioner was removed from service. He further submits that the Labour Court, without properly appreciating the said facts, erred in confirming the removal order passed by the disciplinary authority. He thus prayed that the impugned order be set aside and the petitioner be reinstated into service with full backwages.

On the other hand, the learned Standing Counsel for respondent No.1-APSRTC reiterating the stand taken in the counter-affidavit submitted that the petitioner, having reported sick at APSRTC Hospital, Tarnaka on 28.01.1993, remained absent from his duties from 02.02.1993 without any intimation to the hospital authorities and failed to take discharge certificate to report for duty. He submitted that if the petitioner had taken any treatment in a private hospital or with an

Ayurvedic or Unani Practitioner, he should have intimated the same either in person or by post to the Depot authorities and got the leave sanctioned, but he did not do so. He further submitted that though the Enquiry Officer sent several letters to the permanent address furnished by the petitioner, but all the letters were returned undelivered, and therefore, an *ex parte* enquiry was conducted, and based on the enquiry report, the petitioner was removed from service duly following the procedure, which was confirmed by the Labour Court. Having regard to the nature of the proved charges, the punishment of removal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner, and the learned Standing Counsel for respondent No.1-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

Though the learned counsel for the petitioner contends that the 1st respondent-APSRTC, without issuing any notice and without giving reasonable opportunity to the petitioner, conducted an *ex parte* enquiry, the fact remains, before the Labour Court the petitioner filed a memo stating that he is not disputing the domestic enquiry, and accordingly, the domestic enquiry conducted by the 1st respondent-

APSRTC was held valid by the Labour Court. The petitioner was charge sheeted alleging that he unauthorisedly absented from his duties from 02.02.1993 onwards. The charges leveled against the petitioner, stood proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, upon analyzing the evidence before it, and having found that the petitioner failed to show that he was suffering with any ailment during the period of his absence and he having employed elsewhere for about 4 ½ years, knocked the doors of the Court to gain entry into service and enjoy the benefits, held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges. The findings arrived at by the Labour Court being based on proper appreciation of the evidence on record, I see no reason whatsoever to interfere therewith, more so when the charges leveled against the petitioner stood proved in the departmental enquiry and the petitioner failed to point out any infirmities in the conduct of the departmental enquiry.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 7th November, 2007.
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[1] (2005) 3 SCC 254